

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date **October 12, 2005** Time **9:30 to 4:30 PM** Place **Insurance Dept., Rm 3112**

Members

(=excused)

Commission Members

*Chairman, Joyce W. Clark, *Washington*
David M. Lattin, Salt Lake

Darwin L. Johnson, *Wasatch*
Glen W. Roberts, *Utah* R. Curt Webb, *Cache*

Department Staff

John E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	<i>Perri Babalis</i> <i>AG Legal Counsel</i>	<i>Brad Tibbitts</i> <i>Director, P&C</i>	<i>Gerri Jones</i> <i>MC Examiner</i>
Sheila Curtis <i>MC Examiner</i>	Gale Lemmon <i>AG Prosecutor</i>	Jilene Whitby <i>PIO/Recorder</i>	

Minutes

Welcome and Introductions –

- ❑ Joyce Clark was unable to attend due to illness so Curt Webb conducted the meeting and brought it to order at 9:34a.m.
- ❑ Mark Kleinfeld, the department's administrative law judge, introduced himself, gave his background and explained his duties. He has been with the department six years. He previously worked with Consumer Protection and the Health Department and did abstracts in Nebraska.
- ❑ TeJay Rasband, who is a member of ULTA's Executive Committee, was introduced and welcomed.

Adoption of Minutes of Previous Meeting

Glen made the **motion** to approve September's minutes without change. Darwin seconded the motion. Minutes were adopted.

Old Business

- **Review & Concur with Licensee Report**

The September report was not available. Curt wondered if action was taken against an individual or agency's license during an investigation. Mickey said that no action is taken during an investigation. Action is taken when an administrative proceeding is completed.

- **Review Enforcement Case Report & Presentation**

- **Gale provided a PowerPoint presentation and handout entitled, "Overview of Utah Administrative Procedures Act and the Commission's Role"**

- Curt asked who decided who would judge a case, the Commission or the respondent? Gale said the Commission.
 - Gale offered to prepare a matrix of penalties vs. violations
 - He suggested that Orders should be sent out on those cases where the commission has agreed on the penalty. Concurrence is needed between Commission meetings. How can we get it? Mickey suggested the option of using E-Room, a type of chat room, or until that is set up, a conference call.
 - Informal proceedings become final in 15 days so concurrence is needed within that 15 days. If the penalty or case is challenged then a hearing is needed. It is up to the presiding officer to determine if the hearing will be formal or informal.

Stipulations do not require a hearing because they are negotiated. A penalty requires concurrence.

- 75% of disciplinary actions are handled the same.
- How often are administrative hearings held? How often challenged? Mark said there could be 4-5 hearings one month and then none for a month or more.
- About 10% of the penalties are challenged. If the penalty is revocation of license, it will usually be challenged.
- Scheduling a hearing: Thirty days from the date the department files its complaint the defendant must respond. At that time a pre-hearing conference is set, at which time a more in-depth schedule is set. The hearing can be scheduled up to 120 days after the pre-hearing conference, however, normally it is 60 days after. If criminal action is also involved the department issues a stipulation.
- **Motion** by Glen that the Commission delegate all cases to the department for the time being. The vote was unanimous in favor of the motion.
- Mickey will give the Commission a matrix of violations and penalties to concur with at the next meeting.
- **Gale reviewed pending cases:**
 - Michelle Crofts – Failed to complete C.E. She was not willing to stipulate. Complaint was filed and hearing scheduled for November 4.
 - Utah First Title – Late in reinstating license and conducted business while lapsed.
- **Past matters needing concurrence:**
 - Deseret Title – Doing business prior to obtaining license; \$500 fine.
 - Wasatch Title - Failure to file annual report; \$2,000 fine (late four times); 4 month Probation. They have not asked for a hearing and have filed their report.
 - James Loftis - Forged signatures and notary. License Revoked.
 - First National Title Agency – Failed to file annual report; \$1000 fine and 12-month Probation.
 - Patriot Title – Failed to file annual report: \$1000 fine and no Probation.
 - DeerCreek Title – Failed to file; \$1,000 fine and 12 month Probation (2nd offence).
- Curt withdrew from the concurrence phase since he is associated with Deseret Title.
- David made a **motion** to concur on the Deseret Title penalty. Seconded by Glen. Vote was unanimous in favor of the motion.
- Curt returned and conducted rest of meeting.
- Darwin made the **motion** to concur with rest of penalties. David seconded the motion. The vote was unanimous in favor of the motion.

New Business

- **David Moore Letter**

Mickey led the discussion through the separate issues listed in the letter.

- #1. "Correlation between new laws and regulations and the licensing test"

Most new laws go into effect in May. Test questions are reviewed in July. The licensing outline is updated in December. We know in March what the new laws will be. Curt suggested that it would be helpful if people could immediately see the questions they missed on an exam before leaving the testing site. Glen would like to see the July date moved up. Perri can tell us what laws have been changed. Curt asked TeJay his opinion. TeJay would like to see the questions adjusted sooner. Instructors and teachers are keeping up with the law changes. Curt asked Mickey to check on timeliness of reviewing and updating exam questions and looking at missed exam questions.
- #3. "There is confusion about the names of the three licensing tests"

The question of whether a title searcher needs to have a license came up. The department requires it but the industry does not feel it is necessary. Discuss at the next meeting.

- Curt suggested that instead of reviewing the letter further, the Commission invite Mr. Moore to attend the next meeting to discuss his views and concerns. Glen suggested just addressing specific points of the letter instead of all of it.

Break: 11:08a.m.

Reconvened: 11:26a.m.

- Glen made a **motion** to submit Mr. Moore's letter to the education people at ULTA for their review and a response at the next meeting on November 9. TeJay will bring their response.
- **Combine ULTA's Midwinter Convention & Commission Mtg. – Decide**
Curt asked Commissioner Michie for his opinion about holding the Commission meeting during the Midwinter Convention in Vegas. Commissioner Michie expressed concern about how it would appear to others. Department support would be limited to Mickey because the department does not have money for travel expenses. Darwin **moved** to keep the Commission meeting on Jan 11. Seconded by Glen. The vote was unanimous in favor of the motion. ULTA will pay for David's room and registration for the other members of the Commission to attend the ULTA meeting and participate as a panel. Perri expressed concern that paying for David's hotel may be receiving a benefit just because he is a title member and thus be against the law. **Curt asked Perri to prepare an opinion on this matter for the next meeting.**
- **Revised Rule Drafts of:**
 - **R592-3, Submission of Title Schedule of Escrow Charge and Marketing Information Filings / with Transmittal**
Revisions have been made to this rule as discussed at the last meeting. Commission members reviewed the rule for accuracy. Mickey noted that the rule replaces a bulletin. Glen made the **motion** to accept the rule and start the rulemaking process. Seconded by Darwin. The vote was unanimous in favor of the motion.
 - **R592-5, Fiduciary and Other Responsibilities of Title Insurance Producers Providing Escrow Services as Settlement Agents / Gerri Jones**
Motion by Glen to table R592-5 & 6 until the next meeting and concentrate on R592-4. Seconded by Darwin. The vote was unanimous in favor of the motion.
 - **R592-4, Standards for Title Escrow Charges / with Matrix and Escrow Cost Analysis**
Curt suggested the creation of a single rate for all counties. How do we determine a minimum rate? It was decided that commission members would survey the rates being used in the various counties using the cost analysis form on the department's website. Glen suggested using another form for buy sell agreements. Gerri will get a list of title agencies and the counties they are in as well as find out what other states are doing in the way of escrow rates. Rates are based on cost and not profitability. Costs should be reviewed every other year. **Gerri will email the agent information, Escrow Cost Analysis Form and matrix as well as check on rates in surrounding states.**
- **R592-6 (R590-136), Title Insurance Agents Annual Reports – held until next meeting**
- **31A-23a-204 Proposed Changes**
 - Glen expressed concern that the first paragraph does not say what they intended. It needs to say that one person can hold a title license and another person can hold an escrow license. The owner or manager does not have to have those lines of authority. If so, this is not what the language now says. Mickey said owners and managers don't have to have a license in other insurance agency businesses. Glen thought that the search and escrow licenses should be able to be held by separate licensees. Language was changed and the Department was asked to put the proposed legislation in the Department's legislative package. Senator Hatch was suggested as a possible sponsor. The Department agreed to add the proposed legislation to its legislative package.
 - Darwin noted that the face amount of the required fidelity bond is no less than \$50,000. Is that enough? This will be reviewed later.

- Next time discuss forms and the fiduciary rule.
- **Motion** to adjourn by Glen at 3:01.pm.

Other Business from Committee Members

None.

Next Meeting

9:30 a.m., Room 3112, State Office Building

July 13, 2005	January 11, 2006
August 10, 2005	February 8, 2006
September 14, 2005	March 8, 2006
October 12, 2005	April 12, 2006
November 9, 2005	May 10, 2006
December 14, 2005	June 14, 2006